(2)

87-1410

No.

Supreme Court, U.S.
FILED
FEB 22 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

1988 TERM

JOHN BANKS ..... Petitioner

vs.

STATE OF MISSISSIPPI ..... Respondent

APPENDICES TO PETITION FOR CERTIORARI TO THE MISSISSIPPI SUPREME COURT

SAMUEL H. WILKINS
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Attorney for Petitioner

H/6 PW

NO._____

IN THE
SUPREME COURT OF THE
UNITED STATES

1988 TERM

JOHN BANKS PETITIONER

VS.

STATE OF MISSISSIPPI RESPONDENT

APPENDICES TO
PETITION FOR CERTIORARI TO THE
MISSISSIPPI SUPREME COURT

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Attorney for
Petitioner

MANDATE FROM THE

SUPREME COURT OF MISSISSIPPI

TO THE CIRCUIT COURT OF

HINDS COUNTY - GREETINGS

WHEREAS, on the 16th day of December, 1987, the same being a day of the regular term of the Mississippi Supreme Court, begun and held in the Courtroom, in the Gartin Building, in the City of Jackson, Mississippi, on the 2nd Monday of September, in the year of our Lord, 1987, the following final judgment was rendered by the Mississippi Supreme Court, to-wit:

JOHN H. BANKS

#57,405 v.

STATE OF MISSISSIPPI

This cause having been submitted

on the record from the Circuit Court of Hinds County and this Court having considered the same is of the opinion that there is no error therein and doth order that the Judgment of said Circuit Court rendered in this cause on the 13th day of January, 1986, a conviction of aggravated assault and a sentence to serve a term of ten (10) years in the Mississippi Department of Corrections, be and the same is hereby affirmed.

It is further ordered that the appellant do pay all of the costs of this appeal to be taxed.

YOU ARE THEREFORE HEREBY COMMANDED, that such execution and further proceedings be had in said cause, as according to right and justice, and the judgment of our SUPREME COURT and the law of the land ought to be had.

WITNESS, the Hon. Roy Noble Lee, Chief Justice of the Mississippi Supreme Court; also the signature of the Clerk and the Seal of said Court hereunto affixed, at office, in the City of Jackson, this the 4th day of January, A.D., 1988.

Sue Gordon, Clerk

IN THE CIRCUIT COURT OF THE

FIRST JUDICIAL DISTRICT

OF HINDS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI PLAINTIFF

VS. NO. A-486

JOHN BANKS DEFENDANT

MOTION FOR DISCOVERY OF EXCULPATORY MATTER PURSUANT TO BRADY V. MARYLAND, 373 U.S. 83 (1963 and UNITED STATES V. AGURS, 427 U.S. 97 (1967)

Comes now the Defendant, by and through his counsel of record, and respectfully moves this Honorable Court to enter an order requiring the State to produce or permit Defendant to inspect, copy, and/or photograph any material of an exculpatory nature in the case against the Defendant, is provided by Brady v. Maryland, 373 U.S.

83 (1963) and United States v. Agurs, 427 U.S. 97 (1976), and their progeny, including, but not limited to the following, to-wit:

1. Any information relative to any of the witnesses to be called by the State which, if known why the defense would be instrument in impeaching the credibility of the witness or rendering improbable the substance of his/her testimony.

2. Any statements, written, recorded or oral, made by any co-defendant, co-indictee, witness or other person which indicates Defendant is innocent of the crime charged or that Defendant's culpability and involvement were substantially less severe than that charged in the indictment.

3. If applicable, any information relative to the alleged victim herein which tends to support that Defendant herein acted in self-defense, including but not limited to:

A. Any prior criminal record of the victim;

B. Any prior history of violence by the victim;

C. Any history of mental illness or mental defect suffered by the victim;

D. Any prior threats, direct or indirect, by the victim toward the Defendant or any other person;

E. Prior reports made to any law enforcement office concerning threats made by the victim toward the Defendant or any other person or any information communicated to any law enforcement

officer which tends to evidence that the Defendant was in apprehension of fear of violence from the victim.

4. If applicable, names and addresses of any persons within the State's knowledge who could testify that Defendant was not present when the crime was committed, thus could be considered witnesses on behalf of an alibi defense, if presented by the defense.

5. Any other information within the possession, custody or control of the State or which could, through the exercise of diligence, be known by the State or its agent(s), which tends to exculpate Defendant of the charges against him.

Respectfully submitted,

JOHN BANKS

JACK H. YOUNG
His Attorney

JACK H. YOUNG, JR.
YOUNG & YOUNG
Attorneys at Law
Suite 1107 Deposit Guaranty
Bank Building
Jackson, Mississippi 39201
Telephone 601/355-2477

CERTIFICATE OF SERVICE

I, the attorney for the Defendant, do hereby certify that I have this date delivered a true and correct copy of the foregoing Motion to the Honorable Patricia Bennett, Assistant District Attorney, at his/her usual office address at the Hinds County Courthouse, Jackson, Mississippi.

This the 29 day of August, A.D., 1985.

JACK H. YOUNG

§97-3-7. Simple Assault;
aggravated assault.

(2) A person is guilty of aggravated assault if he (a) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or (b) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm; and, upon conviction, he shall be punished by imprisonment in the county jail for not more than one (1) year or in the penitentiary for not more than twenty (20) years.

APPENDIX "C"

§99-5-27. Sureties may arrest and surrender principal.

Bail may, at any time before final judgment, surrender their principal, in vacation to the sheriff, or in open court, in discharge of their liability; but if this be done after forfeiture of the bond or recognizance, the breach of the bond or recognizance must be satisfactorily excused before the court, and all costs be paid by the bail, and such part of the bond or recognizance as the court orders. Upon surrender, the sheriff in vacation, and the court in term-time, may discharge the prisoner on his giving new bail, but if he does not give new bail, he shall be detained

in jail. Bail may arrest their principal anywhere or authorize another to do so.

RULE 4.06 DISCOVERY

(a) The prosecution shall disclose to each defendant or to his attorney, and permit him to inspect, copy, test, and photograph upon request and without further order the following: . . . .

* * *

(5) Exhibit any physical evidence and photos to be offered in evidence; and . . .

* * *

. . .Upon a showing of materiality to the preparation of the defense, the court may require such other discovery to defense counsel as justice may require.

APPENDIX "E"

BY MR. MAYFIELD:

We've got the door if you want to see it. I want to have it marked for identification.

BY MR. SCALES:

We are gonna object to that. That can't go to the Supreme Court.

BY MR. MAYFIELD:

I have a picture of it.

BY MR. SCALES:

Just let the picture go.

* * *

BY THE COURT:

Do you want to view it outside the presence of the jury?

BY MR. EAVES:

Yes, sir.

* * *

APPENDIX "F"

BY THE COURT:

No., I'll just send the jury out.

BY MR. MAYFIELD:

Okay.

BY THE COURT:

Members of the jury, step in the jury room, please.

* * *

BY MR. SCALES:

We had agreed to furnish each other all of the evidence we were gonna introduce in the case.

BY MR. MAYFIELD:

What do you want me to sign, Mr. Scales?

* * *

BY MR. SCALES:

I would like for this Order to be entered.

BY THE COURT:

Do you have any objection to the Order?

BY MR. MAYFIELD:

Your Honor, certainly not if your Honor thinks it's proper I have no objection to it.

BY THE COURT.

All right. What attempts were made to review the physical evidence in the case, Mr. Eaves or Mr. Scales?

BY MR. EAVES:

Your Honor, I had a meeting with Ms. Bennett. We went over the discovery and we went over to the Property Division of the Jackson Police Department and went through all the exhibits and evidence there in the Jackson Police Department and at no time was this door disclosed. Everything else -- we looked at every piece of evidence that we knew of that the Jackson Police Department had but never -- we didn't even know anything about the door. The door wasn't there and there was no indication that there was a door, Your Honor.

BY THE COURT:

What has been the physical location of the door?

BY MR. MAYFIELD:

Your Honor, it's my understanding that it's been in the possession of the victim. Is that correct, Mr. Brister?

BY THE WITNESS:

Yes, sir.

BY MR. MAYFIELD:

It's been in your possession since it happened?

BY THE WITNESS:

Yes, sir.

BY THE COURT:

When did you know of the door, Ms. Bennett?

BY MS. BENNETT:

When did I know of the door?

BY THE COURT:

Yes, ma'am.

BY MS. BENNETT:

I'm not sure I ever personally knew of the door. We did go over to Property and Evidence and asked to see all of the evidence and we looked at everything they brought out which is what they are telling us here. They couldn't have brought this out because it was not over there. All I can say on that is I do recall that the case was set for trial once before when I had another trial or was out of town and I do recall something at that time coming up about the door but I think Mr. Wallace had worked on it at that time and he is trying the case here today. I can't say that I ever personally had knowledge that there was a door.

BY THE COURT:

For the record, I might explain that Ms. Bennett was the origianl Assistant District Attorney handling the case but she's tied up with a case that started yesterday and has not been completed. Is that correct?

BY MS. BENNETT:

That's correct.

BY THE COURT:

All right. When did you first know about the door, Mr. Wallace?

BY MR. WALLACE:

Your Honor, I first knew of the door the last time it was set for hearing and I think, if I'm not mistaken, we mentioned that we did have the door. The defense has seen photographs of the same door but I think it was mentioned that we had the door.

BY THE COURT:

Were you aware that photographs had been made of the door?

BY MR. EAVES:

We saw the photographs of the door at the Police Department.

BY THE COURT:

Well, under all the circumstances, I am gonna allow the -- I don't believe that there has been a true violation of the rules but we will take a recess at this point until you've had sufficient time to examine the door. I also might mention for the record that Mr. Wallace indicatd that there were bullet holes in the door and Mr. Scales indicated he didn't see any a while ago so you might take a real close look at it this time. Let me know when you are ready to proceed.

BY THE COURT:

Have you had sufficinet time, Mr. Eaves?

BY MR. EAVES:

Yes, Your Honor.

BY MR. MAYFIELD:

Q. Go ahead.

A. --The third picture which is for identification purposes and is numbered 20 is a photograph of the interior of the trunk of that same vehicle which contains items that have been recovered and entered into evidence here.

* * *

BY MR. MAYFIELD:

May it please the Court, we would now move the introduction of Exhibits #19 through --

* * *

BY MR. MAYFIELD:

May I pass these to the jury, Your Honor?

BY THE COURT:

Yes, sir.

* * *

BY MR. EAVES:

Q. What did you not bring up here?

BY MR. MAYFIELD:

I object to the form of the question, Your Honor.

BY THE COURT:

Overruled.

BY THE WITNESS:

A. Well, there was the AR-15 rifle -- stolen AR-15 rifle also that we recovered in the trunk of the car.

BY MR. EAVES:

We object to that.

BY THE WITNESS:

Well, you asked the question.

BY MR. EAVES:

And we would like to be heard outside the presence of the jury.

BY THE COURT:

Members of the jury, step in the jury room, please.

* * *



BY THE COURT:

Members of the jury, I want you to listen closely to my instructions I'm giving you at this point. In response to the question, the witness stated that he recoverd a rifle from the defendant's vehicle. He also stated that it was stolen, That is not an issue before this Court whether it was or was not stolen and I am instructing each of you to disregard that portion of the answer that referred to the rifle as being stolen. I need to ask each of you do you understand my question. I'll ask for a show of hands if there are any of you who do not understand my instructions. Ms. Lide, do you understand my instructions?

BY MS. LIDE:

Yes, sir.

BY THE COURT:

Will you disregard it?

BY MS. LIDE:

Yes, sir.

BY THE COURT:

Mr. Beecham, do you understand my instructions?

BY MR. BEECHAM:

Yes, sir.

BY THE COURT:

Will you disregard it?

BY MR. BEECHAM:

Yes, sir.

BY THE COURT:

Ms. Lawshe, do you understand my instructions?

BY MS. LAWSHE:

Yes, sir.

BY THE COURT:

Will you disregard it?

BY MS. LAWSHE:

Yes, sir.

BY THE COURT:

Ms. Irwin, do you understand my instructions?

BY MS. IRWIN:

Yes, sir.

BY THE COURT:

Will you disregard it?

BY MS. IRWIN:

Yes, sir.

BY THE COURT:

Ms. Warren, do you understand my instructions?

BY MS. WARREN:

Yes.

BY THE COURT:

Will you follow them?

BY MS. WARREN:

Yes.

BY THE COURT:

Mr. McInnis, do you understand my instructions?

BY MR. MCINNIS:

Yes, sir.

BY THE COURT:

Will you follow them?

BY MR. MCINNIS:

Yes, sir.

BY THE COURT:

Ms. Holly, do you understand my instructions?

BY MS. HOLLY:

Yes, sir.

BY THE COURT:

Will you follow them?

BY MS. HOLLY:

Yes, sir.

BY THE COURT:

Ms. Westmoreland, do you understand my instructions?

BY MS. WESTMORELAND:

Yes, sir.

BY THE COURT:

Will you disregard it?

BY MS. WESTMORELAND:

Yes, sir.

BY THE COURT:

Ms. Sutherland, do you understand my instructions?

BY MS. SUTHERLAND:

Yes, sir.

BY THE COURT:

Will you disregard it?

BY MS. SUTHERLAND:

Yes, sir.

BY THE COURT:

Mr. Lee, do you understand my instructions?

BY MR. LEE:

Yes, sir.

BY THE COURT:

Will you disregard the answer?

BY MR. LEE:

Yes, sir.

BY THE COURT:

Ms. McKlemurry, do you understand my instructions?

BY MS. MCKLEMURRY:

Yes, sir.

BY THE COURT:

Will you disregard the answer?

BY MS. MCKLEMURRY:

Yes, sir.

BY THE COURT:

Ms. Helfrich, do you understand my instructions?

BY MS. HELFRICH:

Yes, sir.

BY THE COURT:

Will you disregard the answer?

BY MS. HELFRICH:

Yes, sir.

BY THE COURT:

Mr. Groves, do you understand my instructions?

BY MR. GROVES:

Yes, sir.

BY THE COURT:

Will you disregard that portion of the answer?

BY MR. GROVES:

Yes, sir:

BY THE COURT:

Thank you. Are you satisfied with my instructions?

BY MR. EAVES:

Yes, sir.

BY THE COURT:

Mr. Mayfield, are you satisfied with my instructions?

BY MR. MAYFIELD:

The State is satisfied.

BY THE COURT:

Thank you. You may proceed.

BY MR. MAYFIELD:

I'm offering not to do it if you don't accuse me of asking it in bad faith.

BY MR. SCALES:

Well, I object.

BY MR. MAYFIELD:

You object to calling her or not calling her?

BY MR. SCALES:

To calling her as a witness.

* * *

BY THE COURT:

Well, call the witness and let's move along.

BY MR. MAYFIELD:

We call Veronica Brister at this time, Your Honor.

* * *

APPENDIX "H"

BY MR. MAYFIELD:

Q. Your name, please?

A. Veronica Brister.

Q. And you have testified previously in this case?

A. Yes, sir.

Q. Directing your attention to the night of October 29, 1984, do you recall that night?

A. Yes, sir.

Q. In route from your home to downtown, what, if any, statement did the defendant, John Banks, make to you with respect to your husband?

BY MR. SCALES:

With respect to that, we enter an objection. We object to any statement that wasn't brought out on direct examination. We don't think that is proper rebuttal testimony. He had the opportunity to ask this witness that on direct examination. He didn't do it and he failed to do it and now he's attempting to do that which he can't do otherwise.

BY THE COURT:

Is that your only objection?

BY MR. SCALES:

That's our only objection.

BY THE COURT:

Overruled. Let's move along.

BY MR. MAYFIELD:

Q. You may answer the question. Do you remember what my question was?

A. Yes, sir.

Q. All right. Would you tell the jury what he said and use the exact words?

A. Yes, sir. When we were pulling off from my house on the way to downtown, I asked him - - I said where is my husband and they said - - he's in the back of this mother fucker. I said - - well, you have already almost tried to kill him - - he's not gonna be able to breath in there. And he told me - -

* * *

Q. All right, go ahead.

A. I told him - - you've already almost tried to kill him - - he can't breathe back there. Mr. Banks told me - - I should have killed the son of a bitch. That's what he said.

BY MR. SCALES:

Now, Your Honor, that's contrary to what counsel represented that she was gonna say. All of that wasn't asked of this witness on the examination. He didn't lay any predicate for all that stuff. Now, that's highly prejudicial.

BY THE COURT:

Sustained, Mr. Scales.

BY MR. SCALES:

I ask that the jury be instructed to disregard her volunterring testimony there to prejudice their minds in this case.

* * *

BY THE COURT:

Members of the jury, you are to disregard that portion of the witness's testimony that led up to the remark that was alleged to have been made to her by the defendant that he wished he had killed the individual, Mr. Brister, or similar words to that effect.

BY THE COURT:

Do each of you tell me on your oath that you will follow my instructions and disregard that portion as directed?

(Jurors nodding)

BY THE COURT:

Let the record reflect that all the jurors including the alternate answered in the affirmative. Let's move along.

" . . . The first thing that I wanted to bring to your attention are things that I found to be inconsistent. John Banks testified that, when they got to the door, he heard the children. Then he later said that he didn't hear any children. . . ."

APPENDIX "I"

BY MR. MAYFIELD:

Q. My question to you was, were you carrying the weapon that is marked as Exhibit #16 on the 29th of October, 1984?

A. Yes, sir.

Q. Was that before or after you had been convicted of not one but two felonies?

BY MR. EAVES:

To which we object, Your Honor, on the same grounds.

BY THE COURT:

Overruled.

BY THE WITNESS:

A. Sir - -

BY MR. MAYFIELD:

Could the witness be instructed to answer the question?

BY THE COURT:

Yes, just answer the question and you may explain if you desire to do so.

BY MR. MAYFIELD:

Q. Answer the question and then you can explain it.

A. Yes.

Q. All right.

A. Now can I explain?

Q. Explain anything you want to, Mr. Banks, as long as it relates to the question.

A. Ladies and gentlemen of the jury, when I purchased that gun, I was under the impression that a felony type violent crime act was when you couldn't buy a gun or have a handgun and my crime of a felony was a non-violent type crime; therefore, in my mind, I thought that I could have that gun but, after my lawyer explained to me later after the incident happened, I wasn't allowed to carry that gun and that's what happened.

BY MR. MAYFIELD:

Q. Mr. Banks, directing your attention to question number 17 on that application, would you read that question to the jury, please?

A. Yes, sir. Have you ever been convicted of a felony or a misdemeanor?

Q. And out beside it are two blocks. Is that right?

A. Yes, sir.

Q. One of them is yes and one of them is no. Right?

A. That's correct.

Q. And which block is checked?

A. Sir, on my answer to that, I want to explain to you again.

Q. You answer which one is checked and then you can explain it.

A. It has no on it. No is checked.

Q. It's checked no.

A. Yes, sir.

Q. All right.

APPENDIX "K"

A. Now let me explain.

Q. I want you to.

A. As I said up front, the application was submitted for me. What I did was just sign my name and that was it.

Q. Mr. Banks?

* * *

Q. Are you telling this jury that you didn't read this application through before you submitted it?

A. All I did, like I said at first, it was submitted for me. The only thing I did was sign it.

Q. Did you read it before you signed?

A. No, sir, I just signed it.

* * *

Q. What does this say down here below your signature?

A. (Witness looking).

Q. Read that to the ladies and gentlemen of the jury.

A. Subscribed and sworn to before me this 24th day of August, 1984. Notary Public, Hubert West.

Q. Doesn't it say sworn to?

A. Yes, sir.

Q. Do you know what sworn to means?

A. Yes, that's an oath.

Q. An oath to tell the truth.

A. That's correct.

Q. Do you know Mr. Hubert West?

A. Yes, sir, I know of him.

BY MR. MAYFIELD:

May it please the Court, I would move the introduction of #36 for identification into evidence.

BY MR. EAVES:

To which we object as to our previous objection.

BY THE COURT:

Overruled. It may be admitted.

IN THE SUPREME COURT OF THE STATE
OF MISSISSIPPI

JOHN BANKS — APPELLANT

VS. — NO. 57,405

STATE OF MISSISSIPPI — APPELLEE

NOTICE OF APPEAL TO
THE SUPREME COURT OF THE
UNITED STATES

NOTICE IS HEREBY GIVEN that John Banks, the Appellant above named, hereby appeals to the Supreme Court of the United States from the affirmance of Appellant's conviction in the Circuit Court of the First Judicial District of Hinds County, Mississippi on December 16, 1987.

This appeal is taken pursuant to 28 U.S.C. §1257(c).

This Court affirmed, without written opinion, that Appellant's conviction on the charge of aggravated

assault, despite Appellant's claim that the errors committed in the lower court were such that a reversal of his conviction was required.

THIS this 16th day of February, 1988.

/s/Samuel H. Wilkins
Samuel H. Wilkins
Attorney for Appellant

SAMUEL H. WILKINS
Attorney at Law
105 North State Street
P. O. Box 504
Jackson, Mississippi 39205
(601) 354-0770

CERTIFICATE

NOTICE is hereby given that I have this day mailed a true and correct copy of the above and foregoing Notice of Appeal to the U.S. Supreme Court to the Honorable Mike Moore, Attorney General for the State of Mississippi, Honorable William Coleman, Circuit Judge, First Judicial District of Hinds County, Mississippi, and the Honorable Edward Peters, District Attorney, Hinds County, Mississippi at their usual mailing addresses.

DATED this the 16th day of

February, 1988.

/s/Samuel H. Wilkins
Samuel H. Wilkins

VERIFIED PROOF OF SERVICE OF
FILING A PETITION FOR
CERTIORARI TO THE
MISSISSIPPI SUPREME COURT

I, SAMUEL H. WILKINS, being first duly sworn upon my oath allege and say:

1. That I am a member of the Bar of the United States Supreme Court.

2. That on the 16th day of February, 1988, I deposited at the United States Post Office, Jackson, Mississippi, first class postage pre-paid and properly addressed to the Clerk of this Court, forty (40) copies of the Petitioner's Petition for Certiorari within the time allowed for filing.

3. That, in addition, I hand delivered three (3) copies of Petitioner's Petition for Certiorari to the Honorable Mike Moore, Attorney General for the State of Mississippi, at his address of Gartin Justice Building, Jackson, Mississippi.

4. That, in addition, I hand delivered three (3) copies of the Petition to the Honorable Edward Peters, District Attorney for Hinds County, Mississippi at his address of Hinds County Courthouse, West Street, Jackson, Mississippi.

5. That, in addition, I hand delivered one (1) copy of the Petition

to the Honorable William Coleman, Circuit Judge, Hinds County, Mississippi, at his address of Hinds County Courthouse, West Street, Jackson, Mississippi.

Samuel H Wilkins

SAMUEL H. WILKINS